

### § 1.368-3

### 26 CFR Ch. I (4-1-03 Edition)

in effect before January 24, 2003 (*see* 26 CFR part 1, revised April 1, 2002).

(b)(2) through (k) [Reserved]. For further guidance, *see* § 1.368-2(b)(2) through (k).

[T.D. 9038, 68 FR 3387, Jan. 24, 2003]

#### § 1.368-3 Records to be kept and information to be filed with returns.

(a) The plan of reorganization must be adopted by each of the corporations parties thereto; and the adoption must be shown by the acts of its duly constituted responsible officers, and appear upon the official records of the corporation. Each corporation, a party to a reorganization, shall file as a part of its return for its taxable year within which the reorganization occurred a complete statement of all facts pertinent to the nonrecognition of gain or loss in connection with the reorganization, including:

(1) A copy of the plan of reorganization, together with a statement, executed under the penalties of perjury, showing in full the purposes thereof and in detail all transactions incident to, or pursuant to, the plan.

(2) A complete statement of the cost or other basis of all property, including all stock or securities, transferred incident to the plan.

(3) A statement of the amount of stock or securities and other property or money received from the exchange, including a statement of all distributions or other disposition made thereof. The amount of each kind of stock or securities and other property received shall be stated on the basis of the fair market value thereof at the date of the exchange.

(4) A statement of the amount and nature of any liabilities assumed upon the exchange, and the amount and nature of any liabilities to which any of the property acquired in the exchange is subject.

(b) Every taxpayer, other than a corporation a party to the reorganization, who receives stock or securities and other property or money upon a tax-free exchange in connection with a corporate reorganization shall incorporate in his income tax return for the taxable year in which the exchange takes place a complete statement of all facts

pertinent to the nonrecognition of gain or loss upon such exchange including:

(1) A statement of the cost or other basis of the stock or securities transferred in the exchange, and

(2) A statement in full of the amount of stock or securities and other property or money received from the exchange, including any liabilities assumed upon the exchange, and any liabilities to which property received is subject. The amount of each kind of stock or securities and other property (other than liabilities assumed upon the exchange) received shall be set forth upon the basis of the fair market value thereof at the date of the exchange.

(c) Permanent records in substantial form shall be kept by every taxpayer who participates in a tax-free exchange in connection with a corporate reorganization showing the cost or other basis of the transferred property and the amount of stock or securities and other property or money received (including any liabilities assumed on the exchange, or any liabilities to which any of the properties received were subject), in order to facilitate the determination of gain or loss from a subsequent disposition of such stock or securities and other property received from the exchange.

[T.D. 6500, 25 FR 11607, Nov. 26, 1960, as amended by T.D. 6622, 27 FR 11918, Dec. 4, 1962]

#### INSOLVENCY REORGANIZATIONS

#### § 1.371-1 Exchanges by corporations.

(a) *Exchange solely for stock or securities.* (1) Section 371(a)(1) provides for the nonrecognition of gain or loss by a corporation upon certain exchanges made in connection with the reorganization of an insolvent corporation. The section does not apply to a railroad corporation as defined in section 77(m) of the Bankruptcy Act (11 U.S.C. 205(m)). In order to qualify as a section 371(a) reorganization, the transaction must satisfy the express statutory requirements as well as the underlying assumptions and purposes for which the exchange is excepted from the general rule requiring the recognition of gain or loss upon the exchange of property.